

**THE CORPORATION  
OF THE  
TOWN OF NIAGARA-ON-THE-LAKE  
BY-LAW NO. 4571-12**

A BY-LAW TO AUTHORIZE AND REGULATE THE  
PLANTING, CARE, MAINTENANCE AND REMOVAL OF  
TREES ON THE TOWN OF NIAGARA-ON-THE-LAKE'S  
PROPERTY

**WHEREAS** section 135 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorizes a municipality to prohibit or regulate the destruction or injuring of trees;

**AND WHEREAS** section 62 of the *Municipal Act, 2001* authorizes a municipality, at reasonable times, to enter upon land lying along any of its highways to inspect trees, and conduct tests on trees, and to remove decayed, damaged or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

**AND WHEREAS** section 431 of the *Municipal Act, 2001* authorizes, in addition to any other remedy and to any penalty imposed by a by-law passed under section 135, the court in which a conviction has been entered to make an order requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate;

**AND WHEREAS** section 427(3) of the *Municipal Act, 2001* provides that the municipality may recover the costs of doing a thing or matter under section 427(1) from the person directed or required to do it and the municipality may recover the costs by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

**AND WHEREAS** the Council for the Corporation of the Town of Niagara-on-the-Lake recognizes the importance of providing for the protection of existing trees by providing reasonable minimum standards regarding the preservation, planting, protection and maintenance of Town trees;

**NOW THEREFORE**, the Council of the Corporation of Niagara-on-the-Lake enacts as follows,

**1. Definitions**

In this By-law,

- a) "Council" means the Corporation of the Town of Niagara-on-the-Lake;
- b) "deface" includes but is not limited to the painting or carving of words, figures, symbols or any other markings on the bark of a tree;
- c) "destroy" shall mean to change the structure or condition of a tree such that it cannot reasonably be returned to its original structure or condition;
- d) "Director" means the Director of Public Works and the Director of Parks and Recreation or any designated person acting under their direction;

- e) "hazardous" means a tree that is destabilized or structurally compromised such that it poses a potential safety concern to property or life;
- f) "injure a tree" means any act that will harm a tree's health in any manner, which includes but is not limited to the cutting of trees, topping, debarking, marking, defacing, cutting or breaking of tree roots, placing any stone, brick, sand, soil, concrete, vehicle, equipment or other matter or material thereby impeding the free passage of water, air or nutrients to the roots of a tree, excavating, trenching, or soil compacting;
- g) "multiple offence" means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is contravention of the same provision of this by-law; for greater certainty, when multiple trees are injured or destroyed, the injury or destruction of each tree is a separate offence;
- h) "person" means an individual, an organization, a corporation, a partnership, or an association;
- i) "Standards" means those standards set out in the Town of Niagara-on-the-Lake's Tree Removal Policy and Procedure as may be amended or replaced;
- j) "topping" shall mean the inter-nodal cutting of tree branches to stubs or laterals that are not large enough to assume the terminal role of the trunk or branch and also includes such terms as tipping, heading back, hat racking and rounding over;
- k) "Town" means the Corporation of the Town of Niagara-on-the-Lake;
- l) "Town property" includes but is not limited to Town parks and Town streets;
- m) "Town street" includes but is not limited to a common or public highway, road, street, boulevard, lane or other road allowance or any portion thereof under the jurisdiction of the Town of Niagara-on-the-Lake;
- n) "tree" means any living species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 meters at physiological maturity;

## **2. Authority for Planting, Care and Maintenance and Removal of Trees**

- 1) The Director of Public Works is hereby authorized to plan, regulate, supervise and carry out the planting, care and maintenance, protection, preservation, and removal of all trees located on any property under the Director's jurisdiction, including any Town street, with the exception of Queen Street from Simcoe Street to King Street, and Picton Street from King Street to Wellington Street which are administered by the Director of Parks and Recreation.
- 2) The Director of Parks and Recreation is hereby authorized to plan, regulate, supervise and carry out the planting, care and maintenance, protection, preservation, and removal of all trees located on any Town park, street, or municipal property under the Director's jurisdiction.

3) Without limiting the generality of (1), the Director is hereby authorized to take or cause the following action:

- a) plant trees on Town property;
- b) care for and maintain trees located on Town property including removal;
- c) identify the species of trees which may be planted on Town property;
- d) remove a tree located on Town property which is dead or hazardous;
- e) remove without notice or compensation to any person, any object or thing that adversely affects a tree or part of a tree located on a Town property;
- f) prune trees located on private property where the branches of which extend over a Town street, including the branches which are hazardous or create an unsafe condition;
- g) implement all necessary treatments for insect and disease problems associated with trees located on Town property;
- h) stop any work causing injury or destruction to a tree located on Town property that is taking place without permission from the Director;
- i) upon notification to the property owner enter land adjacent to Town property to remove decayed, damaged or dangerous branch extending over a Town street or property if, in the opinion of the Director, the branch poses a danger to the health or safety of any person using the Town street or property.
- j) remove a decayed, damaged or dangerous branch of a tree extending over a Town street or property immediately and without notice to the owner of the land upon which the tree is located if, in the opinion of the Director, the branch poses an immediate danger to the health or safety of any person using a Town street or property.
- k) Should the Director agree to a request for the removal of a tree located on a Town boulevard, all cost shall be payable by the person requesting the tree removal prior to the removal of the tree. All such tree removals are to be carried out by the Director. The tree removal cost shall include a fee for planting and care and maintenance during a three year establishment period of a replacement tree on Town property. The Director shall plant the tree close to the location of the tree removed where the Director determines it is reasonably possible, or, where not reasonably possible, at a location determined by the Director of Public Works.

### **3. Prohibited Acts**

No person shall,

- a) injure or destroy, or cause to be injured or destroyed, a tree growing on Town property;
- b) remove or cause to be removed a tree growing on Town property;

- c) deface, tack, paste or otherwise attach a bill or note or any other thing or object to a tree growing on Town property, or to a stake, post, guard or other object supporting such tree;
- d) hinder or obstruct or attempt to hinder or obstruct the Director in the exercise of the powers and performance of the duties under this by-law;
- e) plant or cause to be planted a tree or any part of a tree on Town property without first having obtained the permission of the Director;
- f) fail to comply with an order issued by the Director

#### **4. Enforcement of By-law**

- 1) In addition to the Director, the administration and enforcement of this By-law may be performed by those persons designated by Council as municipal law enforcement officers.
- 2) Where a person has contravened this By-law, the Director may make an order directing the person to do any or all of the following:
  - a) comply with any conditions required to correct the contravention to the satisfaction of the Director; and/or
  - b) cease the activity which is the subject of the contravention.
- 3) The order issued by the Director pursuant to subsection (2) shall set out:
  - a) the person who contravened the By-law or caused or permitted the contravention;
  - b) reasonable particulars of the contravention and the period within which there must be compliance with the order; and
  - c) if applicable, notice stating that if the work is not done in compliance with the order within the period it specifies, the municipality may have the work done at the expense of the person who contravened the By-law and collected in the same manner as property taxes.
- 4) Orders issued under subsection (2) shall be served personally or by prepaid registered mail to the last known address of the person to be served.
- 5) Where a person has failed to correct any contravention to the satisfaction of the Director within the time specified in an order issued pursuant to this By-law, the Town, in addition to all other remedies it may have, may take all necessary steps to bring the lands into compliance with the By-law.
- 6) The Town may recover those costs incurred by it under subsection (5), from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as taxes.

#### **5. Offence and Penalty**

- 1) Every person who contravenes any provision of this By-law is guilty of an offence. All contraventions of this By-law or orders issued under section 4 are designated multiple offences and continuing offences pursuant to section 429(2) of the *Municipal Act, 2001*.
- 2) Upon conviction of an offence under this By-law, a person is liable to a fine as follows:



- a) The minimum fine for an offence is \$500 and the maximum fine for an offence is \$100,000.
  - b) In the case of a continuing offence, in addition to the penalty mentioned in clause (a) above, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall be \$10,000, and the total of all daily fines for the offence is not limited to \$100,000.
  - c) In the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500 and the maximum fine shall be \$10,000, and the total of all fines for each included offence is not limited to \$100,000.
  - d) A special fine may be imposed, in addition to a fine under clause (a) to above, in circumstances where there is an economic advantage or gain from the contravention of this By-law or an order under section 4 of this By-law, and the maximum amount of the special fine may exceed \$100,000.
- 3) If a person is convicted of an offence for contravening the provisions of this By-law, or an order issued pursuant to this By-law, the Court in which the conviction has been entered may order the person to correct the contravention, which may include but is not limited to: planting or replanting such tree(s) in such manner and within such time period as the Court considers appropriate, such as replacement of a comparable species and/or payment of the tree(s) amenity value as determined by the Designated Official.
- 4) Any costs payable or associated with an order of the Court in subsection (3) are in addition to, and not in substitution for, the payment of any penalty imposed by the Court for the commission of an offence under this By-law or any other applicable legislation.
- 5) In the event that any provision or part of this By-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 30<sup>TH</sup> DAY OF JULY, 2012



DEPUTY LORD MAYOR  
MARIA BAU-COOTE



TOWN CLERK  
HOLLY DOWD